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RICHARD J. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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7 Attorneys for Defendant
BANK OF AMERICA, N.A.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 CALIFORNIA PACIFIC BANK, a
12 California banking corporation,

13 Plaintiff,

14 vs.

15 BANK OF AMERICA, N.A., and
16 DOES 1-20, inclusive,

17 Defendants.

Case No.: C07-03330 JCS

**BANK OF AMERICA'S NOTICE
OF MOTION AND MOTION FOR
ADMINISTRATIVE RELIEF TO
EXTEND TIME TO ANSWER OR
OTHERWISE RESPOND TO
COMPLAINT**

18 **TO CALIFORNIA PACIFIC BANK AND ITS ATTORNEY OF**
19 **RECORD:**

20 **PLEASE TAKE NOTICE** that Defendant Bank of America, N.A., will and
21 does hereby move for administrative relief to extend time to answer or otherwise
22 respond to Plaintiff's complaint.

23 This motion is made pursuant to L.R. 7-11.

24 Good cause exists for the granting of this motion, and the motion is made for
25 the reason and on the grounds that local counsel for Bank of America, which was
26 only recently retained, requested (but was refused) a short two-week extension from
27 California Pacific Bank. Although plaintiff's counsel agreed to seek his client's
28 consent to a two-week extension, California Pacific Bank refused to grant Bank of

1 America the courtesy of any extension.

2 Therefore, Bank of America respectfully requests that the Court grant an
3 additional 14 days by which to file such pleading.

4 DATED: July 31, 2007

SEVERSON & WERSON
A Professional Corporation

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6 By: 
7 Mark J. Kenney

8 Attorneys for Defendant
9 BANK OF AMERICA, N.A.
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

BACKGROUND OF THIS CASE

Plaintiff's complaint is an improper attempt to collaterally attack a temporary injunction entered by the Circuit Court of the Sixth Judicial Circuit of the State of Florida. On June 4, 2007, at 11:00 PM, the Circuit Court Judge granted an order enjoining Bank of America from "honoring any demand made for payment of all or any party of its Letter of Credit" of which California Pacific Bank was the named beneficiary. (Exhibit 5) Despite being a named defendant, California Pacific Bank has completely ignored the Florida litigation. (In fact, a default was entered against California Pacific Bank on July 9, 2007.) Instead, California Pacific Bank has chosen to proceed, in bad faith, with this lawsuit against Bank of America based on Bank of America's compliance with the temporary injunction.

Although Bank of America retained local counsel in this matter on July 25, 2007, California Pacific Bank has refused Bank of America's reasonable request for a short extension.

II.

THE COURT SHOULD GRANT BofA'S REQUEST FOR A SHORT EXTENSION OF TIME TO ANSWER OR RESPOND

Pursuant to Fed. R. Civ. P. 6(b), on a showing of "good cause," the Court may grant a motion seeking an extension of time within which to answer or otherwise respond to a complaint. If the application is made after the statutory time to answer, the Court may find good cause if the defendant's failure to timely answer is based on "excusable neglect." Fed. R. Civ. P. 6(b)(2); see also *Pioneer Investment Serv. Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 392 (1993).

Generally speaking, courts are "quite liberal in granting at least one extension of time to plead" especially when the moving party has sought, but was unable to

1 obtain a stipulation from the opposing party. The Rutter Group, Federal Civil
2 Procedure Before Trial, 12:175 (2006).

3 **II.**

4 **THERE IS GOOD CAUSE FOR GRANTING A SHORT EXTENSION**

5 In this case, good cause exists for granting Bank of America's reasonable
6 request for a short extension.

7 Although the case was filed on June 25, 2007, Bank of America was not
8 served until July 5, 2007. The copy of the complaint that was served contained
9 only the first two pages. Bank of America contacted plaintiff's counsel and
10 requested a complete copy. Eleven days later, on July 16, 2007, Plaintiff hand
11 delivered a complete copy of the complaint to Bank of America. Shortly thereafter,
12 on July 25, 2007, Bank of America retained local counsel. That same day, local
13 counsel contacted plaintiff's counsel to request a short extension. Mr. LaRocca
14 agreed, but stated that he would need California Pacific Bank's consent. While
15 waiting to hear from Mr. LaRocca, counsel for Bank of America prepared a
16 stipulation for a short two week extension. Subsequently, on July 30, 2007, Mr.
17 LaRocca informed Bank of America that, regrettably, he could not obtain his
18 client's consent to the short extension. Bank of America immediately prepared
19 these papers seeking an order granting additional time to answer or otherwise
20 respond to the complaint.

21 Bank of America's failure to timely answer or otherwise respond to the
22 complaint was due to excusable neglect.

23 First, Bank of America did not receive a complete copy of the complaint until
24 July 16, 2007. Only after that date was Bank of America able to retain local
25 counsel.

26 Second, in light of the fact that Bank of America could not reasonably retain
27 local counsel until right before its answer or other responsive pleading was due,
28

1 Bank of America requires additional time to evaluate the case and prepare a proper
2 response.

3 Third, Bank of America's counsel reasonably anticipated that California
4 Pacific Bank would grant its request for a short extension. When its request for an
5 extension was denied, Bank of America immediately began preparing this motion.

6 Finally, Bank of America has not previously requested an extension of time
7 to plead. Granting this request for a short extension will not result in any harm or
8 prejudice to California Pacific Bank, and will not offend principles of fairness and
9 justice.

10
11 DATED: July 31, 2007

SEVERSON & WERSON
A Professional Corporation

12
13 By: 
14 Mark J. Kenney

15 Attorneys for Defendant
16 BANK OF AMERICA, N.A.
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PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

BANK OF AMERICA'S NOTICE OF MOTION AND MOTION FOR ADMINISTRATIVE RELIEF TO EXTEND TIME TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT

on all interested parties in said case addressed as follows:

Leo. M LaRocca
Niven & Smith
425 California Street, 15th Floor
San Francisco, CA 94104-2118

☐ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in San Francisco, California in sealed envelopes with postage fully prepaid.

☒ **(BY HAND)** By placing the documents in an envelope or package addressed to the persons listed above and providing them to a professional messenger service for delivery.

☐ **(BY (1) FEDERAL EXPRESS OR (2) EXPRESS MAIL)**

(1) By depositing copies of the above documents in a box or other facility regularly maintained by Federal Express with delivery fees paid or provided for; or

(2) By placing the above documents in the United States mail for Express Mail delivery at One Embarcadero Center, Suite 2600, San Francisco, CA 94111, in a sealed envelope addressed as above, with Express Mail postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California, on July 31, 2007.


Valerie Stevenson